IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14706 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANHAR T PARMAR & 7 - Petitioner(s)

Versus

JAMNAGAR MUNICIPAL CORPORATION & 2 - Respondent(s)

==========

Appearance :

MR AJ SHASTRI for Petitioner(s) : 1 - 8.
RULE NOT RECD BACK for Respondent(s) : 1 - 3.
MR JR NANAVATI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/11/2005

ORAL JUDGMENT

1.The petitioners have preferred this petition for quashing and setting aside the order, dated 11.3.2002 passed by the respondent No.1 Corporation for recovery

of the amount from the salary.

2. Heard Mr.Shastri for the petitioners, Mr.Nanavaty for respondent No.1 and Mr.Desai, Ld.AGP for respondent No.3. Mr.Shastri, Ld.advocate for the petitioners submitted that the aforesaid order, dated 11.3.2002 is passed by the Corporation without giving any opportunity of hearing to the petitioners. Mr.Nanavaty, Ld.advocate for the Corporation submitted that as such the corporation has acted in pursuance of the order dated 29.1.2002 which is passed by the corporation on the basis of order, dated 17.4.1999 passed by the State Govt under section 451(1) of Bombay Provincial Municipal Corporations Act (hereinafter referred to as “the Act”). Mr.Shastri further submitted that even if the State Govt has passed the said order same is also in breach of principles of natural justice and in his submission the State Govt is impleaded as party in the proceedings and the said challenge to the order of the State Govt is also made by the draft amendment.

3. Mr.Desai, Ld.AGP is not in a position to show any authenticated record for satisfying the court as to whether any opportunity of hearing was given to the petitioners concerned by the State Govt before passing the order, dated 17.4.1999.

4.In view of the aforesaid, as such as per the provisions of Section 451 of the Act, it is required for the State Govt to give an opportunity of hearing to the Municipal Corporation. When the order is to affect the other persons by necessary implication it may also be required for the State Govt to give opportunity to the affected persons. It appears that no opportunity of hearing has been given to the petitioners by the State Govt, may be at the relevant point of time, it might not have come on record before the State Govt as to whether the petitioners are affected because of the same. It further appears that as per section 451(3) of the Act even if said order is passed by the State Govt, the same can be revised or modified or revoked by the State Govt upon the representation made by the Corporation or otherwise which may include the invoking of power by the person who is affected by the order of the State Govt passed under section 451(1) of the Act. Therefore, considering the facts and circumstances, it appears that as in any case the State Govt has not given any opportunity of hearing to the petitioners, the direction can be given to the State Govt to consider the representation of the petitioners under section 451(3) of the Act and the State Govt can be

directed to decide such representation within some stipulated time.

5. A grievance was raised by Mr.Shastri on behalf of the petitioners that the order is not fully implemented. He submitted that in any case, order passed by the Corporation is based on the order of the State Govt which is in breach of principles of natural justice and therefore this court may quash the order of the Corporation even if the petitioners are relegated to the State Govt under section 451(3) of the Act by this court.

6. In my view, when the Corporation has passed the order on the basis of the order passed by the State Govt, same can be said as a consequential order. However, as the opportunity, in any case, is not given by the State Govt, and in view of the reasons recorded herein above, the petitioners can be directed to invoke the jurisdiction of the State Govt under section 451(3) of the Act and until the decision is taken by the State Govt the further implementation of the order passed by the Corporation which is also impugned in this petition can be stayed and in the event the State Govt modifies or revokes the order, dated 17.4.1999 the Corporation would be required to give effect to the same and

therefore after the order passed by the State Govt under section 451(3) in any case the effect will have to be given accordingly.

7. In view of the above, I find that the following directions shall meet with the ends of justice:

(i) The petitioners shall make a detailed representation to the State Govt under section 451(3) of the Act praying for revocation and/or modification of the order, dated 17.4.1999 within a period of two weeks from today.

(ii) The State Govt shall decide the said representation after giving opportunity of hearing to the petitioners as well as to the corporation and shall pass appropriate order as early as possible preferably within a period of three months from the date of receipt of such representation.

(iii) Until the final decision is rendered by the State Govt and communicated to the petitioners by Regd.A.D further implementation of the order annexure “B”, dated 11.3.2002 shall remain in abeyance.

It is clarified that after the final order which may be passed by the State Govt, consequential effect shall be given by the corporation to the order passed by the State Govt within a period of four weeks from the date

of receipt of decision of the State Govt.

5.Petition partly allowed. Rule is made absolute in terms of aforesaid directions. In the facts and circumstances, there shall be no order as to costs.

17.11.05/murty (JAYANT PATEL,J)